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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/608,134	06/30/2003	Etsuo' Oogami	040302-0328	3016

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EXAMINER

KALAFUT, STEPHEN J

ART UNIT	PAPER NUMBER
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1745

DATE MAILED: 09/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/608,134

Applicant(s)

OOGAMI, ETSUO

Examiner

Stephen J. Kalafut

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date (<u>3 dates</u>). | 6) <input type="checkbox"/> Other: ____ |

Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "an electrode tab excluding an electrode tab of which..." is unclear. How can an electrode tab exclude itself?

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lake (US 5,326,652) in view of either Gerard *et al.* (US 4,409,304) or MacKay *et al.* (US 5,503,948).

Lake discloses a cell (12) that includes a power-generating element (column 3, lines 10-12) and electrode tabs (14, 16) that are hermetically sealed (column 2, lines 41-43) in a package film (10). Lake does not disclose a plurality of these cells stacked together with overlapping L-shaped connectors making the connections between them. Gerard *et al.* disclose overlapping cell connectors (7) that include L-shaped sections, enabling a group of flat cells to be grouped into a stack (1000). MacKay *et al.* disclose a group of flat cells (Cell 1 through Cell 18) stacked and connected by connectors (1 through 18) that include L-shaped sections (Figure 6A). Because the grouping of cells would provide for larger current and/or voltage, it would be obvious to assemble a plurality of cells as disclosed by Lake into stacks with L-shaped cell connectors as shown by either Gerard *et al.* or MacKay *et al.*

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Claims 2 and 3 rejected under 35 U.S.C. 103(a) as being unpatentable over Lake in view of either Gerard *et al.* or MacKay *et al.* as applied to claim 1 above, and further in view of Takagaki *et al.* (US 4,554,227).

The above references do not disclose a slit in the bent portion of the electrode tab. Takagaki *et al.* disclose an electrode connector (1) that includes slits (9a, 9b, 9c) within bent portions (3A, 3B, 3C). This enables the portions to be readily bent (column 5, lines 54-60). Because these slits improve the ability of the connectors to undergo bending, it would be obvious to provide slits as shown by Takagaki *et al.* in the bent connectors of Gerard *et al.* or MacKay *et al.*, while connecting a plurality of the cells disclosed by Lake. Claim 3 is rejected over this combination to the extent that it is understood.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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Claims 1 and 4-6 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 2 of copending Application No. 10/608,033 in view of either Gerard *et al.* or MacKay *et al.* In the '033 application, the claims recite a stack of cells that include power-generating elements hermetically sealed in a package film, cell holders in which the cells are mounted, spaces within the cell holders to allow the electrode tabs of the cells to be exposed, locate pins on the cell holders, and bore holes in the cells through which the pins extend. The present claims differ by reciting overlapping L-shaped connectors making the connections between the cells. Gerard *et al.* disclose overlapping cell connectors (7) that include L-shaped sections, enabling a group of flat cells to be grouped into a stack (1000). MacKay *et al.* disclose a group of flat cells (Cell 1 through Cell 18) stacked and connected by connectors (1 through 18) that include L-shaped sections (Figure 6A). Because the grouping of cells would provide for larger current and/or voltage, it would be obvious to assemble a plurality of cells as claimed in the '033 application with L-shaped cell connectors as shown by either Gerard *et al.* or MacKay *et al.* While present claim 1 does not recite the cell holders, they would encompass the subject matter of claims 4-6.

This is a provisional obviousness-type double patenting rejection.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Alaburda (US 3,920,477) disclose series-connected flat cells sealed by gaskets. Wolczak *et al.* (US 6,365,297) disclose cells with L-shaped connectors that insert into clamps.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Kalafut whose telephone number is 571-272-1286. The examiner can normally be reached on Mon-Fri 8:00 am-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

sjk


STEPHEN J. KALAFUT
PRIMARY EXAMINER
GROUP 1700